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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,447	02/12/2004	Michael James Weiland	93214.038	8981

7590

05/19/2005

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EXAMINER

BLANKENSHIP, GREGORY A

ART UNIT

PAPER NUMBER

3612

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/779,447

Applicant(s)

WEILAND, MICHAEL JAMES

Examiner

Greg Blankenship

Art Unit

3612

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 April 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: (see continuation).
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

11. (continued) The applicant has argued that the terms "gate" and "tailgate" mean "very different things" without supplying a definition for either term. The specification does not supply a definition for either term. Merriam-Webster's Collegiate Dictionary, 10th edition, copyright 1997, defines "gate" as "3a: the frame or door that closes a gate b: a movable barrier (as at a grade crossing)". The same dictionary defines "tailgate" as "a board or gate at the rear of a vehicle that can be removed or let down (as for loading)". Both definitions are consistent with the way the examiner has used the terms in describing the patents cited in the rejections of record. Using the definitions above, it is shown that a tailgate may also be called a door since a tailgate is defined as a gate, which is defined as a door. The structures (13) of Deacon are simply closures for an opening of the rear of a vehicle. Many terms may be correctly used to describe these closures (13) such as door, gate, tailgate, endgate, etc that would be recognized by one of ordinary skill in the art. Applicant has not defined the claimed "rear door" and "gate" in such a manner that precludes this interpretation of "rear door" and "gate". Patents are being cited that support this argument.

The applicant states that the examiner "conveniently ignores the fact that Ressler discloses a central section "attached to a side of ramp (44)". This fact was not ignored, but stated by the examiner in each office action. The central section of the bumper is attached to a side of the ramp. This assembly, the ramp and the central section, are pivotally connected to the vehicle body by a hinge. The vehicle body is connected to one of the remaining sections of the bumper, thus the central section is indirectly coupled to one of the remaining sections of the bumper by a hinge and the vehicle body. This meets the limitations of claim 1. This has been said in each office action.

CAB



DENNIS H. PEDDER
PRIMARY EXAMINER

AV 362

5/16/05